



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SW FREEWAY SUITE 2200
HOUSTON TX 77027

Carrier's Austin Representative Box

54

MFDR Date Received

MAY 8, 2007

Respondent Name

TEXAS MUTUAL INSURANCE CO

MFDR Tracking Number

M4-07-5816-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated May 7, 2007: "This patient was a direct admit for persistent right elbow infection of which preauthorization was obtained...The carrier did not perform an audit of the hospital's total charges. The carrier issued payment of \$10,818.00. Under the per diem methodology after carving out implants and other ancillary charges not permitted under the Rules. However, the amount paid by the carrier is insufficient as the hospital's total charges exceeded the stop loss threshold of the acute care inpatient hospital fee guideline... The amount paid by the carrier falls far below the expected reimbursement rate under the Acute Care Inpatient Hospital Fee Guideline (ACIHFG) found in Commission Rule 134.401. Memorial Hermann Hospital's usual and customary charges exceeded the stop loss reimbursement level contained in the ACIHFG and should have been reimbursed at 75% of the total billed charges...In this case, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants amounted to \$40,978.50, and exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401(c)(6)...Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges."

Requestor's Supplemental Position Summary Dated November 11, 2011: "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method...Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$19,915.88."

Requestor's Supplemental Position Summary Dated November 29, 2011: "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method...Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$19,915.88."

Affidavit of Michael C. Bennett dated November 14, 2011: "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "The charges reflected on the attached Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital provided medical care and services to this patient who incurred the usual and customary charges in the amount of \$40,978.50 which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

Affidavit of Patricia L. Metzger dated November 21, 2011: "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "The medical records indicate that this injured worker was diagnosed with a persistent right elbow infection which required lavage and debridement. The principle diagnosis code was 730.12. The surgical procedure was pre-approved by the insurance carrier. The type of surgery performed by the treating physician is inherently complicated and extensive." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and extent of injury, the services and surgical procedures performed on this patient were complicated and unusually extensive."

Amount in Dispute: \$19,915.88

RESPONDENT'S POSITION SUMMARY

Respondent's Packet Dated May 29, 2007: "The reimbursement amount allowed is in accordance with a provider agreement with Concentra Preferred Systems (CPS). Any questions regarding the agreement are to be directed to CPS at 1-877-306-7335."

Response Submitted by: Texas Mutual Insurance Company, 6210 E. Hwy 290, Austin, Texas 78723

Respondent's Supplemental Position Summary Dated September 8, 2011: "The requestor's DWC-60 packet contains no information substantiating its position that (a) its negotiated rate through Concentra Preferred Systems should be waived; (b) the stop-loss exception has only to exceed \$40,000.00 in audited charges and (c) that the admission was unusually extensive or costly."

Response Submitted by: Texas Mutual Insurance Company

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
May 10, 2006 through May 19, 2006	Inpatient Hospital Services	\$19,915.88	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- CAC-131-Claim specific negotiated discount.
- CAC-97-Pyment is included in the allowance for another service/procedure.
- 217-The value of this procedure is included in the value of another procedure performed on this date.
- 921 –Bill repriced in accordance with a negotiated rate.

Issues

1. Does the documentation support a contractual agreement exists in this dispute?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the carrier paid the services in dispute in accordance with a negotiated rate. A review of the submitted explanation of benefits does not denote a PPO/contractual reduction was taken. The respondent submitted a copy of an agreement between the requestor and Concentra Preferred Systems. This agreement is not signed by either party; therefore, the division concludes that the documentation does not support a contractual agreement exists in this dispute.
2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$40,978.50. The Division concludes that the total audited charges exceed \$40,000.
3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services" and further states that "...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." The requestor in its original position statement states that "This patient was a direct admit for persistent right elbow infection of which preauthorization was obtained...The carrier did not perform an audit of the hospital's total charges. The carrier issued payment of \$10,818.00. Under the per diem methodology after carving out implants and other ancillary charges not permitted under the Rules. However, the amount paid by the carrier is insufficient as the hospital's total charges exceeded the stop loss threshold of the acute care inpatient hospital fee guideline..." This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method...Based upon this information, Memorial Hermann has

met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$19,915.88.” In support of the requestor’s position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor’s supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

4. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor’s position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was nine days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of nine days results in an allowable amount of \$10,062.00.

The division concludes that the total allowable for this admission is \$10,062.00. The respondent issued payment in the amount of \$10,818.00. Based upon the documentation submitted no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

10/31/2012
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.